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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,979	08/22/2003	Ann Louise McCormack	19615	1058
23556	7590	10/25/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			MATZEK, MATTHEW D	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	
			1771	

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/646,979		MCCORMACK ET AL.	
	Examiner		Art Unit	
	Matthew D. Matzek		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/2/05, 10/1/04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> . |

Continuation of Attachment(s) 6). Other: IDS: 9/10/04, 6/10/04, 3/29/04, 12/12/03.

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Election/Restrictions

1. Claims 28-30 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/16/2005.

Claim Objections

2. Claim 1 is objected to because of the following informalities: MVTR is to have units of g/m²/24 hours. Appropriate correction is required.

3. Claim 23 is objected to because of the following informalities: it has two periods. Appropriate correction is required.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-27 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Haffner et al. (US 6,045,900) as further evidenced by Morman et al. (WO 01/83599 A1).

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- a. Haffner et al. teach a breathable barrier comprising a film layer comprising a filled film comprising about 50 to 70% calcium carbonate (col. 8, lines 23-25) and ethylene polymer (Abstract) and another layer comprising a nonwoven, spunbonded or bonded carded web layer (col. 3, lines 50-52). The laminate has a WVTR (MVTR) of more than 1500 g/m²/day (col. 3, lines 34-37). In a preferred embodiment the film layer is stretched and made of homopolymers, copolymers, terpolymers, and blends of polyolefins. An extensive list of ethylene (polyolefin) polymers has been disclosed including linear low-density polyethylene (LLDPE) (col. 7, line 49 – col. 8, line 8). The low-density ethylene copolymers (letdown resin) have a density of less than 0.915 g/m² (col. 8, line 64 – col. 9, line 4). In an embodiment the low-density ethylene elastomer is blended with a second polyethylene polymer (filled carrier resin) having a density ranging from about 0.90 to about 0.95 g/m² (col. 10, lines 5-11). The basis weight of the film layer desirable ranges from 15-35 g/m² (col. 10, lines 59-64).
- b. Claims 17 and 18 are rejected as the nonwoven woven layer may comprise multilayer nonwoven laminates (col. 11, lines 4-10).
- c. Claims 19 and 20 are rejected as the film layer may comprise multiple layers **12** (Fig. 1).
- d. Haffner et al. teach a WVTR in excess of 1500 g/m²/day. This anticipates the breathability of instant claim 23.
- e. Claim 25 is rejected as the base layer **14** comprises from about 50% to about 98% of the multilayer film thickness (col. 10, lines 66-67).

f. Claims 26 and 27 are rejected as the breathable barrier of Haffner et al. may be used in garments and personal care products (col. 1, lines 14-17).

g. It is noted herein that the teachings of Haffner et al. include WVTR in excess of 1500 g/m²/day. It is the Examiner's interpretation that such a teaching encompasses the ranges of 5,000 and 10,000 g/m²/day as claimed herein. The use of material with high WVTR is recognized in the art of breathable barriers as it is evidenced herein by Haffner et al. As evidenced by Morman et al. it is well known to have breathable laminates for use in personal and personal care garments that have MVTR. The larger the WVTR value the greater the ability for the article to allow water vapor to be expelled from the article. This is highly desirable as the article is intentionally created for its breathability.

h. Although Haffner et al. does not explicitly teach the claimed melt indices or the break strain in the cross direction, it is reasonable to presume that said properties are inherent to Haffner et al. Support for said presumption is found in the use of like materials (i.e. a breathable laminate comprising the instantly claimed polyolefins with the instantly claimed densities). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of the claimed melt indices or the break strain in the cross direction would obviously have been present one the Haffner et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Double Patenting

5. Claims 1-27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-50 of copending Application No. 10/703,761. Although the conflicting claims are not identical, they are not patentably distinct from each other because both articles are directed to breathable laminates of polyethylene with common densities and melt indices.

6. Claims 1-27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of copending Application No. 10/335,244. Although the conflicting claims are not identical, they are not patentably distinct from each other because both articles are directed to breathable laminates of polyethylene with common densities and melt indices.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

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NORCATORRES
PRIMARY EXAMINER